

Region 10 Superfund  
**RELEASABLE**

Date 2/1/10

Initial per T. Yackulic

~~CONFIDENTIAL~~

January 28, 1999

**RE: Coeur d'Alene Settlement Negotiations Between the United States, State of Idaho, and Coeur d'Alene Tribe and Union Pacific Railroad Company: Agreement in Principle**

This document reflects the terms of the Agreement in Principle which the undersigned counsel believe represent key terms of a settlement of the claims of the United States, State of Idaho and Coeur d'Alene Tribe (Governments) against Union Pacific in the Coeur d'Alene Basin. The Parties to this negotiation have labored in good faith and at length through various offers, counteroffers, meetings, conference calls and technical documents. This document sets forth the terms of an Agreement in Principle with the recognition that not all aspects of our mutual understandings are, or can be, fully delineated at this time. Continued good faith dealings will be necessary to successfully proceed through the several steps that remain to reach a final settlement, including public comment and response processes, Surface Transportation Board coordination, completion of technical documents, and the final negotiation and approval of a Consent Decree by appropriate Government officials. Therefore this Agreement in Principle between the Parties is nonenforceable and nonbinding. However, this document allows the Parties to proceed with further negotiations under the certain express mutual understandings that are set forth herein.

**1. Response Action Obligations:**

Union Pacific will implement a response action protective of human health and the environment that is consistent with the EE/CA developed for the Union Pacific Wallace-Mullan Branch right-of-way (ROW). The response actions will be implemented in accordance with the design documents currently being developed by the Parties. As attachments to and components of the Consent Decree embodying the settlement, the design documents will be subject to the public review and comment requirements of CERCLA. The Governments have worked to give Union Pacific sufficient information about the response action that must be implemented to enable the railroad to estimate the cost of the work that must be performed. Nonetheless, the response actions will be selected based on their meeting the requirement that they protect human health and the environment. Union Pacific will also provide funding for Government oversight of Response Action implementation in accordance with an oversight plan to be agreed upon by the Parties.

**2. Disposal Site:**

The Central Impoundment Area and Slag Pile area within the Bunker Hill Superfund Site will be available to Union Pacific through September 1, 1999 and September 1, 2000, respectively, for the placement of materials removed from the Mullen-Plummer ROW as part of the Response Action. In the event these locations are generally made available for the placement of materials from the Coeur d'Alene Basin beyond these dates, they will also be made available to Union Pacific. Union Pacific will be responsible for any additional incremental costs associated with placement of Union Pacific materials at these locations. Union Pacific will receive releases of liability for hazardous substances disposed of in the CIA and slag pile similar to those included in the Consent Decree settling claims against Union Pacific in the Bunker Hill Superfund Site.

The conditions for Union Pacific's use of the CIA and slag pile for disposal will be consistent with the criteria for accepting waste from outside the Superfund Site set forth in the December 12,

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1997 memorandum of Michael F. Gearheard of EPA. In disposing of materials at the CIA, Union Pacific will be obligated to coordinate its disposal with the State and EPA and their authorized representatives, including the U.S. Army Corps of Engineers, and to place the materials in a manner consistent with the CIA closure design and requirements. Since a closure design has not yet been developed for the slag pile area, Union Pacific will provide the State and EPA, and their authorized representatives, with the necessary information on disposal volumes, material types, and anticipated disposal schedules to facilitate such design. When disposing of materials in the slag pile, Union Pacific will coordinate its disposal with the State or EPA contractors who are working in the slag pile area, and will place disposal material in the slag pile in a manner consistent with the slag pile closure design.

3. Response Action/Trail Operation and Maintenance (O&M):

a. Response Action O&M:

Union Pacific will be responsible for either performing or providing sufficient funds for the performance of response action operation and maintenance (O&M) activities in perpetuity. Union Pacific will perform O&M of the response actions and repair of catastrophic flood damage for a period of 30 years in accordance with an O&M Plan to be completed by the parties for incorporation into the final Consent Decree. The O&M Plan will describe the specific O&M activities that Union Pacific will be responsible for performing.

(i) The periodic routine inspections performed by State/Tribal Trustee (STT) personnel shall in no way relieve Union Pacific of obligations related to either the inspection or repair of response action elements, and the cost of inspections by STT personnel are oversight costs not included in the Trail O&M amounts discussed below. Union Pacific shall be responsible for repair of damage to the response action barriers.

The O&M plan will generally describe preventative maintenance activities, end point definitions, and definitions of conditions that will trigger Union Pacific's obligation to repair damage to some aspect of the response action. Appropriate response actions required of Union Pacific to repair damage to the response action barriers will also be defined. The federal, state and tribal entities will also define each entities' responsibilities for oversight of Union Pacific's implementation of the response action and oversight of Union Pacific's performance of O&M, and will work out procedures for enforcement and taking actions to maintain the protectiveness of the response action.

The routine response action O&M activities that will be the responsibility of Union Pacific are as follows:

(1) Inspections of the protective barriers will be conducted according to the following schedule:

- Inspections of the barrier components
  - \* Routine inspections — 1 such inspection per month.
  - \* Major inspections — 2 per year.

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\* Extraordinary.— After storm events or notice by an oversight representative that is given under agreed-to oversight protocols.

(2) Preventative maintenance:

- Ditches and culverts--perform the following steps to meet endpoint definitions that will be included in technical attachment to Consent Decree, but no less than two times per year.
  - \* snagging, flushing, clearing to allow through flow.
  - \* minor invert grade adjustments to allow gravity drainage through culvert.
  - \* perform weed control as it may relate to endpoints for maintaining the integrity of the barriers, but no less than two times per year. Weed control may include spraying, burning, and/or manual removal and subsequent barrier repair.
  - \* at parking areas that are part of the protective barrier, perform surface maintenance to meet endpoint definitions.
  - \* place access barriers as needed to prevent public access to off-trail areas at which no response action has been constructed in order to prevent unauthorized access and potential exposure to hazardous substances.
- Necessary repairs:
  - \* repairs to asphalt trail, including shoulder grading and erosion, to meet specified endpoints.
  - \* repairs of embankment erosion to meet specified endpoints.
  - \* repairs of erosion of other protective barriers to meet specified endpoints.
- The technical attachments to Consent Decree will include provisions for five year review of response action, including testing, evaluation of barriers and preparation of an evaluation of the response action by qualified technical personnel no less often than every five years during the initial 30 years after entry of Consent Decree.

(ii) Since the primary purpose served by the asphalt "trail" surface along the rail line is as a protective barrier over contamination being left in place and is an integral component of the response action, Union Pacific will be responsible for maintaining this asphalt surface in perpetuity.



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Union Pacific will replace the asphalt surface entirely at a yet to be determined date within the first 20 years of trail operation, and will also provide sufficient funds for maintenance and replacement of the asphalt surface as needed in perpetuity. The frequency of routine maintenance and replacement of the asphalt surface must be included in the O&M plan and comport with commonly accepted national engineering standards.

(iii) Union Pacific will perform and/or fund repair of catastrophic failures of the response action barriers in perpetuity, as with other aspects of response action O&M. Repair of response action barriers will include repair or reconstruction of berms, embankments and armoring of the railroad grade itself.

(iv) Union Pacific will not be responsible for repair of damage to the response action barriers that is caused solely by the actions of the Governments or their representatives or agents. In addition, Union Pacific will not have any responsibility for repair of damage to the response action barriers implemented under this settlement that arises from any future response actions or restoration activities not conducted by Union Pacific within or adjacent to the ROW. However, Union Pacific shall have the burden of proving that damages to the response action barriers were caused solely by actions of the Governments or their representatives or agents.

Union Pacific will also provide sufficient funds for the performance of post-30 year response action O&M and repair of catastrophic flood damage in perpetuity. To fund such response action O&M after 30 years, Union Pacific will deposit \$100,000 annually into an escrow account for five years, with the first such payment in 2001, with such funds serving as "seed money" for the long term O&M. An evaluation of the adequacy of the escrow account in entirely funding response action O&M in perpetuity after 30 years shall be undertaken by the Parties after an appropriate period of time, such as ten years after entry of a Consent Decree. If the Parties are unable to agree whether the escrow account is adequate to fund Response Action O&M and catastrophic flood damage repair after 30 years, Union Pacific will retain the obligation to perform response action O&M in perpetuity.

The Governments will agree to non-enforceable language in the Consent Decree or O&M Plan, as appropriate, stating that the State/Tribe trail operating entity(s) (STT) will consider the availability of, and seek, additional funding sources to assist Union Pacific in meeting its long term O&M and catastrophic repair obligations. Union Pacific will provide funding for the Governments' oversight of these long term obligations for annual and event triggered inspections as provided in an oversight plan to be agreed upon by the Parties and incorporated into the Consent Decree. EPA five year reviews of the response action will also be funded by Union Pacific.

b. Trail O&M:

Union Pacific will pay \$2,600,000 to the STT to be used for Trail O&M. The payment is to be made within a short period of time (90 days for example) after entry of the Consent Decree. In general, Trail O&M activities include those activities described in the October 16, 1998 Memorandum from Ridolfi Engineers, except that bridge inspections and preventative maintenance of the Chatcolet Bridge (described in the Ridolfi memorandum as response action O&M activities) are now listed under trail O&M, so long as Union Pacific initially repairs and outfits the bridges so that they are in good operating condition for use as part of the trail. More specifically, trail O&M activities will include all O&M activities that are not specifically identified as being part of the

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response action O&M obligation of Union Pacific. The trail O&M activities include but are not necessarily limited to:

- Service activities including:
  - Litter control
  - Toilet cleaning and supply
  - Miscellaneous cleaning
  - Trail sweeping
- Bridge Inspections
- Preventive maintenance of the Chatcolet Bridge
- The following repair activities:
  - Bridge deck and guard rails
  - Painting of buildings and amenities
  - Repair of amenities
- Other activities including:
  - Trail surface regrading within the Reservation
  - Washing of steel bridges
  - Bridge deck replacement
- Trail use management, including periodic patrols

The Parties will work together to ensure that the approved ISTEA funding in the amount of \$1,000,000 is applied to the construction of the trail.

#### 4. Natural Resource Damage (NRD) Settlement:

In addition to other agreed actions and payments, Union Pacific will pay \$2,000,000 for a release of NRD claims against Union Pacific regarding the inactive Mullen-Plummer Right of Way and associated inactive spurs within the Coeur d'Alene Basin that have been or could be brought by the Coeur d'Alene Tribe, the State of Idaho or the United States. The payment is to be made within a reasonably short period of time (30-60 days for example) after entry of the Consent Decree. The scope of the release of claims for natural resource damages is discussed in Section 7 below.

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##### 5. Trail Amenities:

With the exceptions explained below in this paragraph, Union Pacific will provide trail amenities as listed and described in Tables 1 and 2 (attached). Union Pacific will also provide \$100,000 for use at STT discretion for upgrade of existing community facilities that will serve as amenities for trail users or other trail uses as the STT may determine. The final list of appropriate amenities will be as described in final design documents attached to the settlement. The exact number of amenities listed in Tables 1 and 2, such as highway signs, bollards, fencing, flashers and similar items, will be determined by applicable safety and operation requirements as set forth in national trail operations guidelines and standards such as the Manual of Uniform Traffic Control Devices and not necessarily by the numbers listed in the two tables. It is expected that such adjustments will be minimal, but the adjustments will not be finally determined until the parties complete the design documents. Any necessary upward adjustments to the list of new amenities shall not be funded from the \$100,000 offered by Union Pacific for upgrades of existing community facilities or other uses determined by the STT.

##### 6. Past and Future Response Costs:

Union Pacific will pay the costs incurred by the United States in negotiating a settlement with Union Pacific through a date certain, such as September 30, 1998. The United States has agreed to compromise DOJ attorney time costs through the past cost period, but will include DOJ travel and consultant costs. The date picked for the endpoint of past costs will also serve as the commencement of future response costs, and Union Pacific will periodically reimburse the United States for all future response costs from that date. Union Pacific will continue to pay the documented costs of State of Idaho and Coeur d'Alene Tribe incurred through entry of the Consent Decree. Union Pacific will pay future costs, including oversight costs related to implementation and long-term O&M of the Response Action, in accordance with an oversight plan to be agreed upon by the Parties and incorporated into the Consent Decree.

##### 7. Scope of the Environmental Release for Natural Resource Damages and Response Costs:

a. NRD release: The United States, the State of Idaho, and Coeur d'Alene Tribe will provide Union Pacific with a release or covenant not to sue for claims for natural resource damages regarding the inactive Wallace-Mullan Branch and associated inactive spurs within the Coeur d'Alene Basin. The release will be subject to reopeners similar to those in the federal government's model RD/RA Consent Decree.

b. Response Costs Release: The Governments will provide a release for claims for response costs for releases of hazardous substances from or onto the Wallace-Mullan Branch between milepost 16.5 at Plummer and milepost 7.6 at Mullan and, with the exceptions listed below in this paragraph, to current or historical branch lines, spurs, industrial tracks or sidings connected to the Wallace-Mullan Branch. The specific geographic areas covered by this release will be reflected in an attachment to the Consent Decree. The governments will reserve their claims for response costs relating to the Canyon Creek spur line, the Wallace Yard, and untested or unremediated areas within, through or emanating from the Plummer Junction. The covenants not to sue will be based on the federal government's model RD/RA consent decree, and will include model reservations of rights.

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**8. Indemnification for Takings Claims:**


The Consent Decree will include a provision stating that Union Pacific will indemnify the Governments for any taking claims, the terms of which require further discussion between the Parties.

As has been stated in previous correspondence, the Agreement in Principle between the Parties cannot address, or fully address, every issue that has, or may, arise in these complex negotiations. Further clarification and additional detail necessary for a final settlement between the Parties will come from the public input, the response action design process and the final negotiation and drafting of technical documents and the Consent Decree. No final decisions on response action alternatives can be made until completion of public participation requirements. Continued good faith efforts and cooperation of the Parties will be critical in proceeding through the significant remaining administrative procedures, technical issues and legal processes necessary to reach a final settlement.

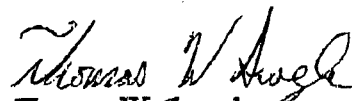
**For the Governments:**



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For the United States

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Environmental Counsel

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SUMMARY OF OASIS, TRAIL, AND STOP & VIEW AMENITIES  
WALLACE-MULLAN BRANCH

Location			Amenities					
Description	M.P.	Designation	Parking # of Stalls/ Surface	Toilet Type	Shade Shelter	Picnic Tables	Park Benches	Bike Rack
Plummer Creek	18.0	Oasis		Compost		2	3	1
O'Garra Bay	28.5	Oasis		Compost	1	2	3	1
Harrison Siding	30.5	Oasis		Compost	1	2	3	1
Springston Siding	33.9	T.H.	10 / Gr.				2	
Springston	34.4	Oasis		Compost		2	3	1
Springston - Medinoni	2 loc's *	S & V				2	2	
Medinoni	41.3	T.H. / Oasis	12 / Gr.	Compost		2	3	1
Lane Siding	45.1	Oasis		Compost		2	3	1
Rose Lake	48.1	Oasis	Existing	Compost		2	3	1
Rose Lake - Cataldo	4 loc's *	S & V				4	4	
Dudley Heights	54.0	Oasis		Compost		2	3	1
Cataldo	57.5	T.H. / Oasis	10 / Gr.	Compost		2	2	1
Cataldo - Enaville	4 loc's *	S & V				4	4	
Enaville	62.6	T.H.	10 / Gr.			2	2	
Shoni	72.9	T.H.	20 / Pv			2	2	
Osburn Siding	75.8	T.H.	10 / Pv.		1	2	2	
Wallace	80.0	T.H.	30 / Pv.			2	2	
West Mullan	8.4	T.H.	20 / Pv.			2	2	
Totals			9	9	3	38	48	9

The locations of the Stop & View (S & V) sites have not been specifically identified at this time. The number of locations in the reaches of the trail are as requested by the Trustees. The number of tables and benches shown for the respective reaches represents the aggregate for all locations within that reach.  
T.H. - Trail Head    Gr. - Gravel    M.P. - Mile post    Pv - Asphalt Concrete Pavement

01/20/99 WED 12:09 LTX/RX NO 58281

01/28/99 THU 17:31 FAX 202 514 4180  
01/15/99 FRI 12:51 FAX 202 514 4180  
AUG-07-98 10:07AM FROM-MCULLEFF/RICKMILLAN

ENRD EES REG 7 & 10  
GIVEN SUNDAY  
END EES REG 7 & 10  
3034671836

T-058 P.05/07 P-888

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01/28/99 THU 17:32 FAX 202 514 4180  
01/15/99 FRI 12:52 FAX 202 514 4180  
AUG-07-98 10:07AM FROM MCCULLEYFRICK&GILMAN

ENRD EES REG 7 & 10  
GIVENS/FUNKLEWORK  
ENRD EES REG 7 & 10  
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T-056 P.07/07 F-686

Table 2  
SUMMARY OF FENCING & SIGNAGE  
WALLACE-MULLAN BRANCH

Description	Unit of Measure	Quantity Req'd for Safety
Privacy Bushes / Trees (4' o/c)	Allowance	\$10,000
Safety Fencing (6' H. chain link)	FL	2,200
Livestock Fencing (3-strand)	FL	8,200
Bollards	Ea	50
Signs		
- Trail Traffic Control	Ea	143
- Road Traffic Control	Ea	106
- Hazard Advisory	Ea	125
- Misc. Advisory	Ea	93
- Mile Marker	Ea	72
- Regulatory	Ea	254